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Chapter 1: California Fallen Firefighters Assistance Tax Clarification Act of 2006

Serena Crouch

Code Section Affected

SB 41 (Battin); 2007 STAT. Ch. 1 (*Effective February 7, 2007*).

I. INTRODUCTION

On November 5, 2006, over 800 family members, friends, and fellow firefighters gathered to remember Captain Mark Loutzenhiser,¹ a firefighter who died in the line of duty after he was overrun by flames in the Esperanza Fire of 2006.² During the memorial service, the pastor described a picture drawn by the firefighter's son that portrayed a burning house, a Forest Service fire engine, Loutzenhiser, and the words "I miss you dad. I wish I could see you. You will always be in my heart."³ The pastor also described the day that Loutzenhiser's wife found her husband's wedding ring at the site of the fire.⁴ Captain Loutzenhiser left behind a wife and five children.⁵

Captain Loutzenhiser was just one of the five members of Engine 57 who died in the Esperanza Fire of 2006.⁶ In response to the firefighters' deaths, five thousand people contributed over \$1.3 million to the families of the five men who died in the fire.⁷ However, because of state and federal tax laws, the families almost did not receive the donations.⁸ California law and the Internal Revenue Code do not allow tax-exempt charitable organizations, like the United Way, to assist individuals.⁹ As a remedy, Chapter 1 grants a one-time tax waiver to allow

1. Kenny Klein, "*I Miss You Dad, I Wish I Could See You*": *First of Fallen Firefighters Recalled; Mark Loutzenhiser Leaves 5 Kids*, PRESS-ENTER. (Riverside, Cal.), Nov. 5, 2006, at A5.

2. *Id.*; see also U.S. DEP'T OF AGRIC. ET AL., ESPERANZA FIRE ACCIDENT INVESTIGATION FACTUAL REPORT 2 (2006), <http://lang.sbsun.com/pdfs/news/Esperanza-Incident-Report.pdf> [hereinafter ESPERANZA FIRE ACCIDENT INVESTIGATION REPORT] (on file with the *McGeorge Law Review*) (explaining that Loutzenhiser's crew was called to the Esperanza Fire to provide protection for structures and that the entire crew died when they were overrun by the fire).

3. Klein, *supra* note 1.

4. *Id.*

5. *Id.*

6. *Id.*; ESPERANZA FIRE ACCIDENT INVESTIGATION REPORT, *supra* note 2, at 2. The Esperanza Fire was started by an arsonist, destroyed thirty-four homes, and blackened over 40,000 acres. Cal. Dep't of Forestry & Fire Prot., Fact Sheet, Oct. 31, 2006, http://cdfdata.fire.ca.gov/pub/cdf/images/incidentfile161_325.pdf (on file with the *McGeorge Law Review*).

7. SENATE FLOOR, COMMITTEE ANALYSIS OF SB 41, at 2 (Feb. 5, 2007).

8. See *id.* ("It was later found that the disbursal of the money . . . could have violated federal tax laws and . . . could have risked [the United Way's] tax-exempt status.").

9. 26 U.S.C.A. § 501(c)(3) (West 2002 & Supp. 2007); CAL. REV. & TAX. CODE § 23701d (West 2004).

tax-exempt organizations to provide payments to the families of the five fallen firefighters for any donations made between October 26, 2006, and June 1, 2007.¹⁰

II. LEGAL BACKGROUND

A. Existing Law

Under federal and California law, a charitable organization may only provide assistance to persons or entities belonging to a charitable class.¹¹ Once a charitable organization identifies a charitable class, the organization must make a specific, objective assessment that a recipient is in need.¹² As a result, a charitable organization cannot provide financial assistance to specific individuals or earmark its donations for individuals or families.¹³

B. The Attacks of September 11, 2001

After the terrorist attacks of September 11, 2001, and the subsequent anthrax attacks, charitable organizations experienced difficulty in promptly distributing disaster relief funds to the victims.¹⁴ In response, the federal government passed the Victims of Terrorism Tax Relief Act of 2001,¹⁵ which allowed organizations to provide assistance to the victims without the use of a specific needs test.¹⁶

& Supp. 2008); SENATE FLOOR, COMMITTEE ANALYSIS OF SB 41, at 2 (Feb. 5, 2007).

10. 2007 Cal. Stat. ch. 1, §2(a)-(b).

11. DEP'T OF THE TREASURY, INTERNAL REVENUE SERV., DISASTER RELIEF: PROVIDING ASSISTANCE THROUGH CHARITABLE ORGANIZATIONS 5 (2005), <http://www.irs.gov/pub/irs-pdf/p3833.pdf> [hereinafter DISASTER RELIEF] (on file with the *McGeorge Law Review*) (defining a "charitable class" as a group of individuals that "must be large or indefinite enough that providing aid to members of the class benefits the community as a whole" (emphasis omitted)); see also Franchise Tax Bd., California Conformity to Federal Law for Taxable Year 2007, Aug. 1, 2007, <http://www.ftb.ca.gov/forms/updates/conformity.html> (on file with the *McGeorge Law Review*) (explaining that California law conforms to the Internal Revenue Code as of January 1, 2005).

12. DISASTER RELIEF, *supra* note 11, at 7. However, an assessment is not required for "crisis counseling, rescue services, or emergency aid such as blankets or hot meals The individuals requiring these services are distressed irrespective of financial condition." *Id.*

13. *Id.* at 5.

14. JANET GITTERMAN & MARVIN FRIEDLANDER, DISASTER RELIEF-CURRENT DEVELOPMENTS M-6 (2003), <http://www.irs.gov/pub/irs-tege/eotopicm03.pdf> (on file with the *McGeorge Law Review*).

15. Pub. L. No. 107-134, 115 Stat. 2427 (2002).

16. GITTERMAN & FRIEDLANDER, *supra* note 14, at M-5 to M-7 (explaining that, under the special needs test, a charitable organization must take into "account the charitable purposes for which it was formed, the public benefit of its activities, and the specific needs and resources of each victim"); JOINT COMM. ON TAXATION, TECHNICAL EXPLANATION OF H.R. 2884, THE "VICTIMS OF TERRORISM TAX RELIEF ACT OF 2001," AS CONSIDERED BY THE HOUSE ON DECEMBER 13, 2001, at 10 (2001), <http://www.house.gov/jct/x-86-01.pdf> [hereinafter TECHNICAL EXPLANATION] (on file with the *McGeorge Law Review*) (explaining that the law applied to assistance in connection with the September 11, 2001 attacks and the anthrax attacks before January 1, 2002).

Rather, the organizations only needed “to make[] the payments in good faith using a reasonable and objective formula.”¹⁷ However, the payments still had to be used to serve a charitable class.¹⁸

C. *The Esperanza Fire of 2006*

The Esperanza Fire of 2006 created a similar quandary for the Central County United Way because thousands of people made donations to provide assistance to the families of the firefighters who died in the fire.¹⁹ The Central County originally placed the donations into the Esperanza Firefighting Assistance Fund²⁰ and then gave the money to the Central County United Way for management and disbursement.²¹ However, the Internal Revenue Service informed the Central County United Way it could not disburse the donations to the five families.²² The families of the five firefighters did not meet the definition of a charitable class.²³ Thus, the United Way needed to obtain a one-time waiver before releasing donations to the families.²⁴

Congress was the first to react in providing the needed exemption.²⁵ On December 21, 2006, President Bush signed into law the Fallen Firefighters Assistance Tax Clarification Act of 2006.²⁶ The federal legislation resembled that which was passed after September 11, 2001,²⁷ and allowed the United Way to provide payments to any family member of a firefighter who died during the Esperanza Fire.²⁸ In addition, under the Act, the United Way could provide

17. TECHNICAL EXPLANATION, *supra* note 16, at 10 (explaining that an organization can use a good faith standard of assisting families of firefighters killed in the September 11, 2001 attacks and would not need to consider the specific needs of each family).

18. *Id.*

19. SENATE FLOOR, COMMITTEE ANALYSIS OF SB 41, at 2 (Feb. 5, 2007).

20. Kimberly Trone, *Governor Comes to Cabazon to Sign Bill for Fire Victims' Families*, PRESS-ENTER. (Riverside, Cal.), Feb. 8, 2007, http://www.pe.com/reports/2007/esperanza/stories/PE_News_Local_D_gov08.259fb2e.html (on file with the *McGeorge Law Review*).

21. Jim Sanders, *Tax Law Freezes Funds for Firefighters' Families*, SACRAMENTO BEE, Jan. 14, 2007, at A3; Letter from Mark Walker, President, United Ways of Cal., to Senator Jim Battin, Cal. State Senate (Jan. 12, 2007) [hereinafter Walker Letter] (on file with the *McGeorge Law Review*).

22. Sanders, *supra* note 21.

23. Jack Siegel, *A Worthy Cause Does Not Justify Stupid Legislation: Fallen Firefighters Assistance Tax Clarification Act of 2006*, Jan. 2, 2007, http://www.charitygovernance.com/charity_governance/2007/01/datetime_januar.html (on file with the *McGeorge Law Review*).

24. Walker Letter, *supra* note 21.

25. California Fallen Firefighters Assistance Tax Clarification Act of 2006, H.R. 6429, 109th Cong. (2006); Walker Letter, *supra* note 21.

26. Press Release, Office of the Press Sec'y, President Signs H.R. 1492, H.R. 3248, H.R. 6342, and H.R. 6429 (Dec. 21, 2006), <http://www.whitehouse.gov/news/releases/2006/12/20061221-2.html> (on file with the *McGeorge Law Review*).

27. SENATE FLOOR, COMMITTEE ANALYSIS OF SB 41, at 2 (Feb. 5, 2007).

28. *Id.*; Letter from Christy Bouma & Brian Hatch, Gov'tal Advocates, Cal. Prof'l Firefighters, to Senator Don Perata, Cal. State Senate (Jan. 17, 2007) (on file with the *McGeorge Law Review*); Press Release, Senator Diane Feinstein, Feinstein, Boxer, Bono, Calvert and Lewis Ask President to Move Quickly in

“payments [that] are made in good faith using a consistently applied reasonable and objective formula.”²⁹

III. CHAPTER 1

Chapter 1, the California Fallen Firefighters Assistance Tax Clarification Act of 2006,³⁰ allows a tax-exempt organization, as defined by the Internal Revenue Code,³¹ to make direct payments to the families of the five firefighters who died during the Esperanza Fire in Southern California.³² Chapter 1 only requires an exempt organization to make payments “in good faith using a reasonable and objective formula which is consistently applied,”³³ and it applies to payments made between October 26, 2006 and June 1, 2007.³⁴ In order to prevent the loss of an organization’s tax-exempt status, Chapter 1 declares that these payments are “made in furtherance of the charitable purpose of that organization.”³⁵

IV. ANALYSIS

A. *Allowing a Community to Take Care of Its Families*

When California’s tax laws nearly prevented the victims’ families from receiving help from the community, the situation resembled that of the “Grinch trying to steal Christmas.”³⁶ Bob Duistermars, the President of the Central County United Way, felt that “a firefighter who risks his life protecting the public should not have to worry about red tape.”³⁷ He further expressed that there ought to be a way for the community to take care of its families when tragic events take place.³⁸ Without the one-time exemption enacted by Chapter 1, donors would not

Assisting Families of Fallen Firefighters (Dec. 14, 2006), <http://feinstein.senate.gov/06releases/r-firefighters-ltr1214.pdf> (on file with the *McGeorge Law Review*).

29. California Fallen Firefighters Assistance Tax Clarification Act of 2006, H.R. 6429, 109th Cong. (2006); Press Release, Congresswoman Mary Bono, Bono Praises Effort to Ensure Fire Fund Relief to Families of Fallen Firefighters (Dec. 9, 2006), <http://bono.house.gov/News/DocumentSingle.aspx?DocumentID=54102> (on file with the *McGeorge Law Review*).

30. 2007 Cal. Stat. ch. 1, § 1.

31. See 26 U.S.C.A. §501(c)(3) (West 2002 & Supp. 2007) (defining “tax-exempt organizations” to include “[c]orporations, and any community chest, fund, or foundation, organized and operated exclusively for . . . charitable . . . purposes . . . , no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation”).

32. 2007 Cal. Stat. ch. 1, § 2(a).

33. *Id.*; see GITTERMAN & FRIEDLANDER, *supra* note 14, at M-7 (defining the “reasonable and objective” formula as well as the “good faith” standard).

34. 2007 Cal. Stat. ch. 1, § 2(b).

35. *Id.* § 3.

36. Sanders, *supra* note 21.

37. *Id.*

38. *Id.*

have been entitled to a tax deduction, and organizations that released monies could have lost their tax-exempt status or might have been required to pay taxes on the \$1.3 million in donations.³⁹

Supporters of Chapter 1 believed that the new law would “facilitate distribution of the funds received to the survivors of the five brave firefighters.”⁴⁰ Chapter 1 allows the disbursement of payments made on behalf “of any firefighter who died as a result of the October 2006 Esperanza Incident fire.”⁴¹ In addition, Chapter 1 only requires the Central County United Way to disburse the donations “in good faith using a reasonable and objective formula,” rather than a need-based test.⁴² Therefore, the donations can be released to the families of the five firefighters that were affected by the Esperanza Fire tragedy.⁴³

B. *The Future of Disaster Relief*

One critic claimed that any change in the law for the United Way should apply to all relief efforts,⁴⁴ and, in the mean time, “[t]he United Way of Central County, California should have been forced to return the money to the donors.”⁴⁵ He argued that while the firefighters’ families were worthy of the donations, the law was clear that the families do not meet the definition of a charitable class.⁴⁶ He explained that laws require line drawing and are in place to prevent fraud and “assure that only certain activities are subsidized by taxpayers.”⁴⁷ Therefore, despite the noble cause of the Central County United Way, the law should have been enforced.⁴⁸

This critic further argued that “[t]he [Central County United Way] is not the first organization to make a mistake with respect to [a] charitable class and it surely won’t be the last.”⁴⁹ However, in response to this criticism, local lawmakers have expressed that they would like “state and federal laws passed to make tax-exempt funds that are raised for survivors of emergency responders killed in the line of duty.”⁵⁰ In addition, California Governor Arnold

39. *Id.*

40. See ASSEMBLY COMMITTEE ON REVENUE AND TAXATION, COMMITTEE ANALYSIS OF SB 41, at 2 (Jan. 30, 2007) (listing registered supporters as the California Professional Firefighters (Co-Sponsor), California Fire Chiefs Association, Fire Districts Association of California, and United Ways of California).

41. 2007 Cal. Stat. ch. 1, § 2(a) (2007).

42. *Id.*

43. SENATE FLOOR, COMMITTEE ANALYSIS OF SB 41, at 2 (Feb. 5, 2007).

44. Sanders, *supra* note 21 (quoting Jack Siegel).

45. Siegel, *supra* note 23.

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*

50. Kimberly Trone, *Esperanza Firefighters’ Families Closer to Receiving Donations*, PRESS-ENTER. (Riverside, Cal.), May 24, 2007, http://www.pe.com/digitalextra/metro/wildfires/stories/PE_News_Local_B_firefund03.431396c.html (on file with *McGeorge Law Review*).

Schwarzenegger verbally committed, during the signing ceremony of Chapter 1, to sign into law permanent language dealing with similar situations.⁵¹ If the Governor follows through on his promise, such legislation will prevent the reoccurrence of similar problems with releasing funds earmarked to individuals in the future.⁵²

V. CONCLUSION

“Ninety-foot flames overran the crew of U.S. Forest Service Engine 57 in the first hours of the Esperanza Fire” and killed five firefighters.⁵³ In response, over \$1.3 million in donations poured in from the community.⁵⁴ Yet the money almost did not make it to the hands of the surviving families.⁵⁵ While money cannot fully compensate these families’ losses,⁵⁶ the donations “will help [them] face their future.”⁵⁷ Chapter 1 allows the release of donations to the surviving families by granting a one-time waiver, allowing organizations to make payments directly to the families of the five firefighters who lost their lives.⁵⁸ As a result, the community can rest assured that the families of the five fallen firefighters will receive assistance to “rebuild their homes and lives.”⁵⁹

51. Telephone Interview with Mark Reeder, Capitol Dir., Senator Jim Battin, Cal. State Senate, in Sacramento, Cal. (May 31, 2007) (notes on file with the *McGeorge Law Review*).

52. *See id.* (claiming future laws will allow the release of funds to individuals in similar tragic situations).

53. *See* Ben Goad, *Families Will Receive Donations; Bequest: The President Ensures that Money Raised to Assist Fallen Firefighters’ Next of Kin is Distributed*, PRESS-ENTER. (Riverside, Cal.), Dec. 22, 2006, at B01, http://www.pe.com/digitalextra/metro/wildfires/stories/PE_News_Local_H_firefund22.3a10f96.html (on file with the *McGeorge Law Review*) (listing the five killed as Mark Loutzenhiser, Jess McLean, Jason McKay, Daniel Hoover-Najera, and Pablo Cerda).

54. SENATE FLOOR, COMMITTEE ANALYSIS OF SB 41, at 2 (Feb. 5, 2007).

55. *See id.* (explaining the Central County United Way-risked losing their tax-exempt status if the raised funds were disbursed under existing law).

56. Trone, *supra* note 50.

57. Jim Miller, *Lawmakers Clear Bill Aiding Esperanza Fire Victims’ Families*, PRESS-ENTER. (Riverside, Cal.), May 24, 2007, http://www.pe.com/digitalextra/metro/wildfires/stories/PE_News_Local_B_firebill06.2676911.html (on file with the *McGeorge Law Review*).

58. 2007 Cal. Stat. ch. 1, § 2(a) (2007); *see* SENATE FLOOR, COMMITTEE ANALYSIS OF SB 41, at 2 (Feb. 5, 2007) (noting that the existing code had to be amended to allow the disbursement of the money raised for the families of the fire victims).

59. Press Release, Cal. State Assembly Republican Caucus, Battin, Benoit Merge Efforts to Help Firefighter Families: These Firefighters Were True Heroes, Selflessly Giving Their Lives to Protect Others (Jan. 25, 2007) (on file with the *McGeorge Law Review*).